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IN THE
SUPREME COURT OF THE UNITED STATES

ESTHER KIOBEL, et al.,
Petitioners.

v.

ROYAL DUTCH PETROLEUM CO., et al.,
Respondents.

ASID MOHAMAD, et al.,
Petitioners.

v.

PALESTINIAN AUTHORITY, et al.,
Respondents.

On Writs of Certiorari to the
United States Courts of Appeals for
the Second Circuit and District of Columbia Circuit

BRIEF OF FORMER U.S. SENATOR ARLEN SPECTER, HUMAN RIGHTS FIRST, AND THE ANTI-DEFAMATION LEAGUE AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*

This Brief of *Amici Curiae* is respectfully submitted pursuant to Supreme Court Rule 37 in support of the Petitioners.[1] All parties have consented to the filing of this brief. *Amici* have a long-standing commitment to promoting respect for human rights and accountability for human rights abuses.

Former U.S. Senator Arlen Specter served five terms as a United States Senator from Pennsylvania, from 1980 through 2011. Senator Specter is a former Chairman and Ranking Member of the Senate Committee on the Judiciary. He has long supported the rights of torture victims to seek redress in U.S. courts. Senator Specter was the principal advocate in Congress for the adoption of the Torture Victim Protection Act ("TVPA"), having first introduced the legislation in 1986.

Human Rights First ("HRF") is a non-profit, nonpartisan international human rights organization based in New York and Washington, D.C. HRF builds respect for human rights and the rule of law to help ensure the dignity to which everyone is entitled and to stem intolerance, tyranny, and violence. HRF, then known as the Lawyers Committee for Human Rights, played an

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[1] Pursuant to Supreme Court Rule 37(6), *Amici* affirm that no counsel for a party authored this brief in whole or in part and no person other than *Amici* or their counsel made a monetary contribution to this brief. Consent letters have been filed with the Court by the parties.

important role in promoting the adoption of the TVPA.

The Anti-Defamation League ("ADL") was founded in 1913 to combat racial, ethnic, and religious discrimination. Today, the League is one of the world's leading civil and human rights organizations, fighting hate, bigotry, and anti-Semitism. ADL's nearly 100-year history is marked by a commitment to protecting civil and human rights, both in the United States and abroad. In this connection, ADL has often filed *amicus curiae* briefs in cases arising under the TVPA.

Amici believe their professional expertise and knowledge of the TVPA will assist this Court in its deliberations.

SUMMARY OF ARGUMENT

In 1991, Congress adopted the Torture Victim Protection Act to address a significant gap in U.S. law. While foreign nationals had a right to pursue civil remedies in U.S. courts for serious human rights abuses such as torture or extrajudicial killing, U.S. citizens had no comparable right under the Alien Tort Statute ("ATS"). The TVPA addressed this omission in federal law by establishing a right of action for torture and extrajudicial killing, thereby affording U.S. citizens the same rights already granted to foreign nationals. The TVPA was also adopted to ensure victims of torture and extrajudicial killing would have a right of action for such acts even if the

courts developed a restrictive approach to ATS litigation.

The TVPA establishes civil liability to any "individual" who commits acts of torture or extrajudicial killing. The text and legislative history of the TVPA do not limit its applicability to natural persons. In U.S. law, the word "individual" can include juridical persons such as organizations and corporations. The TVPA's legislative history also reveals Congress's goal in using the word "individual" was to make clear foreign governments would not be subject to the TVPA. History shows that human rights abuses can emanate from any entity, and liability must be extended accordingly. For these reasons, Congress would not have limited the TVPA's scope of liability to natural persons.

For 20 years, the TVPA and the ATS have served essential functions by punishing perpetrators of serious human rights abuses, providing redress for victims, and deterring future harms. The TVPA's plain meaning and legislative history make clear it was designed to work in tandem with, and not in opposition to, the ATS. Indeed, the ATS still serves a vital role, allowing foreign nationals to bring claims for torture and extrajudicial killing as well as other serious violations of international law such as slavery, genocide, crimes against humanity, and war crimes. This Court acknowledged the distinct and complementary roles of the TVPA and ATS in *Sosa v. Alvarez-Machain*, 542 U.S. 692, 728, 731 (2004). This relationship should not be changed in the absence of explicit congressional action.

The decisions in *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010) and

Mohamad v. Rajoub, 634 F.3d 604 (D.C. Cir. 2011) would eviscerate a legal framework that has been affirmed by the three branches of government on numerous occasions. Allowing these decisions to stand would cause further injury to victims of serious human rights abuses and would send the wrong message to perpetrators of such egregious acts.

ARGUMENT

I. THE TEXT AND LEGISLATIVE HISTORY OF THE TVPA OFFER NO INDICATION IT WAS MEANT TO AFFECT OR PREEMPT THE ATS

The TVPA was established to provide a right of action to U.S. citizens for torture and extrajudicial killing, thereby affording U.S. citizens the same right already granted to foreign nationals through the ATS. Nothing in the TVPA's text or legislative history indicates it was meant to affect or preempt the ATS. This Court should rely on the plain meaning of the TVPA and its accompanying legislative history to reject efforts to alter it beyond its congressionally authorized parameters. *Cf. Samantar v. Yousuf*, 130 S. Ct. 2278 (2010) (relying on the text, purpose, and history of the Foreign Sovereign Immunities Act to reject efforts to alter its application).

A. The Text of the TVPA Offers No Indication It Was Meant To Affect or Preempt the ATS

In 1991, Congress adopted the Torture Victim Protection Act to supplement the remedies already available under the Alien Tort Statute.[2] Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73 (1992).

The TVPA establishes a cause of action for torture and extrajudicial killing. The statute provides, in pertinent part:

> An individual who, under actual or apparent authority, or color of law, of any foreign nation, (1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or (2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death.

28 U.S.C. § 1350 (note), at § 2(a).

In contrast, the Alien Tort Statute was established in 1789 as part of the First Judiciary

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[2] The TVPA was first introduced in 1986 by Senator Arlen Specter to establish "a federal right of action against violators of human rights" and authorize "suits by both aliens and U.S. citizens who have been victims of gross human rights abuses." 132 CONG. REC. S7062 (June 6, 1986) (internal citations omitted).

Act. It now provides "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. According to this Court's seminal decision in *Sosa v. Alvarez-Machain*, 542 U.S. at 712, the ATS is a jurisdictional grant, which also enables "federal courts to hear claims in a very limited category defined by the law of nations and recognized at common law."

There is no textual basis for suggesting the TVPA was meant to affect or preempt the ATS as the TVPA contains no reference to the ATS. These statutes do not conflict, but rather coexist, each with a distinct purpose. Therefore, courts must give effect to both statutes. *See J.E.M. AG Supply v. Pioneer Hi-Bred Int'l*, 534 U.S. 124 (2001). A court determining the rights of a U.S. citizen who is the victim of torture does not address the ATS in such a suit. Similarly, an ATS suit based upon acts of torture, extrajudicial killing, or other universally recognized norms such as slavery or genocide does not implicate the TVPA. In such circumstances, "[c]ourts, are not at liberty to pick and choose among congressional enactments[.]" *Morton v. Mancari*, 417 U.S. 535, 551 (1974). Because the ATS and TVPA are "capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective."[3] *Id.* Courts should not override

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[3] *See also Cty. of Oneida v. Oneida Indian Nation*, 470 U.S. 226 (1985) (where a later congressional enactment does not cover every issue of a federal

such clear legislative choices. *Whitfield v. United States*, 543 U.S. 209, 216-217 (2005). Unless congressional intent to displace the earlier statute is "clear and manifest . . . the later act is to be construed as a continuation of, and not a substitute for, the first act." *Posadas v. National City Bank*, 296 U.S. 497, 503 (1936). In the absence of clear congressional intent, courts should give full effect to both statutes.

B. The Legislative History of the TVPA Offers No Indication It Was Meant to Affect or Preempt the ATS

Unlike the ATS, the TVPA has an extensive legislative history. This history offers clear evidence that the TVPA was not meant to affect or preempt the ATS. Rather, the TVPA was meant to address a significant gap in U.S. law. While foreign nationals had a right to pursue civil remedies in U.S. courts for serious human rights abuses such as torture or extrajudicial killing, U.S. citizens had no comparable right.

According to the 1991 House Committee Report on the TVPA, torture violates standards of conduct accepted by virtually every nation, and its prohibition has attained the status of customary international law.[4] "These universal principles

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common law claim, courts are not free to supplement legislative enactments rendering them meaningless).

[4] House and Senate committee reports may be regarded as an explanation of legislative intent

provide scant comfort, however, to the thousands of victims of torture and summary executions around the world. Despite universal condemnation of these abuses, many of the world's governments still engage in or tolerate torture of their citizens, and state authorities have killed hundreds of thousands of people in recent years." H.R. REP. NO. 102-367, at 3 (1991). *See also* S. REP. NO. 102-249, at 2 (1991).

The House Committee Report acknowledged the role of the ATS in providing redress to victims of human rights abuses. It cited *Filartiga v. Pena-Irala*, 630 F.3d 876 (2d Cir. 1980), which first recognized the modern application of the ATS, with approval. But, it also recognized the limits of the ATS, which only extended a civil remedy to foreign nationals and not to U.S. citizens. The TVPA was meant to address this limitation.[5]

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where the meaning of a statute is obscure, *Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 474 (1921), or where the legislative history indicates that the meaning proposed by a party is inapposite, *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 266 (1979).

[5] *See also Torture Victim Protection Act Hearing of 1989: Hearing on S.1629 and H.R. 1662 Before the Subcomm. on Immigration & Refugee Affairs of the S. Comm. on the Judiciary*, 101st Cong. 51 (1990) ("The Lawyers Committee believes that the Torture Victim Protection Act affords Congress the opportunity to both reaffirm the principles underlying the *Filartiga* decision and its progeny, and to provide a clear statement of legislative and

> The TVPA would . . . enhance the remedy already available under section 1350 in an important respect: While the Alien Tort Claims Act provides a remedy to aliens only, the TVPA would extend a civil remedy also to U.S. citizens who may have been tortured abroad. Official torture and summary executions merit special attention in a statute expressly addressed to those practices. At the same time, claims based on torture or summary executions do not exhaust the list of actions that may appropriately be covered by section 1350. That statute should remain intact to permit suits based on other norms that already exist or may ripen in the future into rules of customary international law.

H.R. REP. NO. 102-367, at 4.

The House Committee Report makes clear the TVPA was not adopted to replace the ATS; rather,

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political support for victims of human rights abuse who are able to bring a case against their oppressors. The Torture Victim Protection Act will not replace the 200-year old Alien Tort Claims Act. Instead, it will make relief clearly available to United States citizens as well as aliens who are the victims of torture or extrajudicial killing abroad.").

it was designed to work in conjunction with that statute.[6]

> The TVPA would establish an unambiguous and modern basis for a cause of action that has been successfully maintained under an existing law, section 1350 of the Judiciary Act of 1789 (the Alien Tort Claims Act) . . . . Section 1350 has other important uses and should not be replaced. There should also, however, be a clear and specific remedy, not limited to aliens, for torture and extrajudicial killing.

Id. at 3.

The Senate Committee Report accompanying the TVPA offered the same analysis in nearly the

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[6] *See also Torture Victim Protection Act: Hearings and Markup Before the Committee on Foreign Affairs and Its Subcommittee on Human Rights and International Organizations*, 100th Cong., 1 (1988) (statement of Rep. Yatron, Member, House Subcomm. on Human Rights and International Organizations) ("International human rights violators visiting or residing in the United States have formerly been held liable for money damages under the Alien Tort Claims Act. It is not the intent of the Congress to weaken this law, but to strengthen and clarify it. Federal courts should not allow congressional actions with respect to this legislation to prejudice positive developments, but rather to act upon existing law when ruling on the cases presently before them.").

same language. *See* S. REP. NO. 102-249, at 3 (1991).

> The TVPA would establish an unambiguous basis for a cause of action that has been successfully maintained under an existing law, section 1350 of title 28 of the U.S. Code, . . . Section 1350 has other important uses and should not be replaced.

The legislative record also reveals that Congress adopted the TVPA as a bulwark against possible judicial curtailment of the ATS. At the time of the TVPA's adoption, only two circuit courts had addressed the ATS. As noted *supra*, Congress cited the *Filartiga* decision and its approach to ATS litigation with approval throughout its deliberations on the TVPA. At the same time, Congress expressed concerns about the D.C. Circuit's opinion in *Tel-Oren v. Libyan Arab Republic*, 725 F.2d 774 (D.C. Cir. 1984), in which Judge Bork criticized the *Filartiga* approach to the ATS. H.R. REP. NO. 102-367, at 3-4; S. REP. NO. 102-249, at 4-5. This uncertainty surrounding the ATS coincided with the adoption of the Convention against Torture and subsequent ratification debates in the Senate.[7] As a result, the TVPA was

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[7] The Convention against Torture was referenced throughout the TVPA's legislative history. *See, e.g.*, S. REP. NO. 102-249, at 3 (1991) ("This legislation will carry out the intent of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

meant to ensure victims of torture and extrajudicial killing would have a right of action even if the courts developed a restrictive approach to ATS litigation. This reasoning appears throughout the legislative record.[8]

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which . . . obligates state parties to adopt measures to ensure that torturers within their territories are held legally accountable for their acts."); H.R. REP. NO. 102-367, at 1, 3. Significantly, the Convention against Torture also requires States Parties to provide remedies to victims of torture and does not limit this obligation to victims tortured by natural persons. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14, Dec. 10, 1984, 1465 U.N.T.S. 85

[8] In submitting the bill to the Senate, Senator Specter acknowledged the goal of the TVPA was to remove any uncertainty with respect to civil claims for torture and extrajudicial killing.

> The landmark case of *Filartiga v. Pena-Irala* confirmed that official torture is in fact a violation of the law of nations. . . . Since that holding, several recent decisions have questioned whether this statute provides a clear basis for future suits in U.S. federal courts. In *Tel-Oren v. Libyan Arab Republic*, for example, judges dismissed an action brought under Section 1350 and noted the lack of clear congressional guidance on the subject. . . . The legislation I am

On signing the TVPA into law, President George H.W. Bush acknowledged the importance of providing a civil remedy to victims of torture.

> Today I am signing into law H.R. 2092, the "Torture Victim Protection Act of 1991," because of my strong and continuing commitment to advancing respect for and protection of human rights throughout the world. The United States must continue its vigorous efforts to bring the practice of torture and other gross abuses of human rights to an end wherever they occur.[9]

Statement on Signing the Torture Victim Protection Act of 1991, Mar. 12, 1992, 28 WEEKLY COMP. PRES. DOC. 465 (Mar. 16, 1992).

In sum, the text and legislative history of the TVPA offer no indication it was meant to affect or preempt the ATS.[10] Indeed, this Court

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> introducing today . . . seeks to clarify this area of law.

132 CONG. REC. S7062 (June 6, 1986) (internal citations omitted).

[9] Statement on Signing the Torture Victim Protection Act of 1991, Mar. 12, 1992, 28 WEEKLY COMP. PRES. DOC. 465 (Mar. 16, 1992).

[10] The U.S. Government has offered a similar interpretation of the TVPA in various pronouncements to the international community. *See, e.g.*, Committee against Torture, Consideration of Reports Submitted by States

acknowledged the distinct and complementary roles of the TVPA and ATS in *Sosa v. Alvarez-Machain*, 542 U.S. at 728, 731. Despite numerous requests to do so, this Court declined to limit the ATS through a strained reading of the TVPA. "Congress has not in any relevant way amended § 1350 or limited civil common law power by another statute." *Id.* at 725. Rather, this Court acknowledged congressional reaffirmation of the ATS through the TVPA. Congress "not only expressed no disagreement with our view of the proper exercise of the judicial power, but has responded to its most notable instance by enacting legislation supplementing the judicial determination in some detail." *Id.* at 731. In so doing, this Court reaffirmed numerous decisions upholding accountability for human rights abusers under the ATS.[11] *Id.* at 732 (citing

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Parties Under Article 19 of the Convention: United States of America, U.N. Doc. CAT/C/28/Add.5 (2000), at 61 ("While the Alien Tort Claims Act only provides a remedy to foreign nationals, the 1992 Torture Victim Protection Act allows both foreign nationals and United States citizens to claim damages against any individual who engages in torture or extrajudicial killing . . . ."). *See also* Committee against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: United States of America, U.N. Doc. CAT/C/48/Add.3 (2005), at 25-26.

[11] The majority of circuit courts support the position that the ATS does not limit the TVPA. *See, e.g., Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 415 F.3d 1242, 1250-1251 (11th Cir. 2005)

In re Estate of Marcos Human Rights Litigation, 25 F.3d 1467 (9th Cir. 1994); *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980)).

II. THE TEXT AND LEGISLATIVE HISTORY OF THE TVPA DO NOT LIMIT ITS APPLICATION TO NATURAL PERSONS

The TVPA was adopted to expand rather than contract the rights of victims of torture and extrajudicial killing. It promotes accountability for such acts and serves as a deterrent against future harms. It would be inconsistent with these purposes to interpret the TVPA in a restrictive manner.

While the TVPA establishes civil liability to any "individual" who commits an act of torture or

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(finding no apparent intent by Congress to alter the scope of the ATS and concluding that "a plaintiff may bring distinct claims for torture under each statute."); *Kadic v. Karadzic*, 70 F.3d 232, 241 (2d Cir. 1995) ("The scope of the Alien Tort Act remains undiminished by enactment of the Torture Victim Act."). *See also Enahoro v. Abubakar*, 408 F.3d 877 (7th Cir. 2005) (Cudahy, J., dissenting) ("In view of the text of the TVPA itself, the circumstances surrounding its passage, the canons of statutory interpretation discouraging repeals by implication, the legislative history of the Act and prevailing judicial rulings on the subject, it is clear that the TVPA was not intended to preempt or restrict aliens' ability to bring claims for torture and extrajudicial killing under the ATCA.").

extrajudicial killing, the text and legislative history of the TVPA do not limit is applicability to natural persons.[12] This Court has recognized that "individual" can be synonymous with "person." *Clinton v. City of New York*, 524 U.S. 417, 428 (1998). Equally significant, the word "person" is not limited in its meaning to only natural persons; its meaning can include other actors such as corporations. *Santa Clara Cty. v. S. Pac. R.R. Co.*, 118 U.S. 394, 396 (1886).

Moreover, the TVPA's legislative history explains why Congress used the word "individual" in the TVPA. It was done to ensure foreign governments would not be subject to the TVPA and could only be sued through the Foreign Sovereign Immunities Act ("FSIA"). According to the Senate Committee Report:

> The legislation uses the term 'individual' to make crystal clear that foreign states or their entities cannot be sued under this bill under any circumstances: only individuals may be sued. Consequently, the TVPA is not meant to override the Foreign

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[12] This interpretation is supported by The Dictionary Act. "In determining the meaning of any Act of Congress," the word "person" includes corporations and other juridical entities "unless the context indicates otherwise . . . ." 1 U.S.C. § 1. The purpose of the TVPA was to provide a remedy for victims of torture and extrajudicial killing. It would be inconsistent with the TVPA to limit the scope of liability to a whole class of defendants.

> Sovereign Immunities Act (FSIA) of 1976, which renders foreign sovereigns immune from suits in U.S. courts, except in certain instances.

S. REP. NO. 102-249, at 7 (footnote omitted). The House Committee Report offered a similar explanation. "Only 'individuals,' not foreign states, can be sued under the bill." H. REP. 102-367, at 4. As this Court recognized in *Samantar v. Yousuf*, 130 S. Ct. at 2285-2286, the FSIA establishes a specialized civil liability regime that applies to foreign states. Since its adoption, Congress has been careful not to create any exceptions to foreign state civil liability outside the FSIA. The TVPA's use of the word "individual" ensured the FSIA would continue to provide the exclusive mechanism for suing foreign states.

Since its adoption in 1991, several courts have addressed and affirmed the TVPA's applicability to juridical persons. *See, e.g., Sinaltrainal v. Coca-Cola Co.* 578 F.3d 1252, 1264 (11th Cir. 2009); *Aldana v. Del Monte Fresh Produce*, 416 F.3d 1242, 1250 (11th Cir. 2005). Despite these cases, Congress has not revised the TVPA or offered any indication it disagreed with findings of liability for juridical persons, including organizations.

While the ATS represents a distinct legal regime for accountability and redress, these arguments apply with equal force to ATS proceedings against corporations. Efforts to exclude corporations from ATS liability are contrary to the text and legislative history of the statute. Indeed, as this Court noted in *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S.

428, 438 (1989), the ATS "by its terms does not distinguish among classes of defendants."

History shows that human rights abuses can emanate from any entity, including organizations.[13] It logically follows that liability must apply accordingly. To hold otherwise would embolden perpetrators of human rights abuses to organize and combine their resources, thereby increasing their lethality and, oddly, their immunity from liability. Surely Congress did not intend such an outcome when it adopted the TVPA.

III. THE TVPA AND THE ATS SERVE ESSENTIAL FUNCTIONS IN PUNISHING SERIOUS HUMAN RIGHTS ABUSERS, PROVIDING REDRESS FOR VICTIMS, AND DETERRING FUTURE HARMS

The TVPA and the ATS serve essential functions by punishing serious human rights abusers, providing redress for victims, and deterring future harms. Their work is complementary, but distinct, and this relationship should not be changed in the absence of explicit congressional action.

The Alien Tort Statute has played a critical role in punishing perpetrators of serious human rights abuses and has done so for over thirty years. It

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[13] *See, e.g.*, Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, art. 9, Aug. 8, 1945, 82 U.N.T.S. 279 (authorizing the Nuremberg Tribunal to declare any group or organization to be criminal).

establishes civil liability for perpetrators of serious human rights abuses – from torture and extrajudicial killing to genocide and war crimes. And, it provides victims with the ability to seek redress for their injuries in U.S. courts. In *Kadic v. Karadzic*, 70 F.3d at 232, for example, victims of genocide, war crimes, and torture were able to bring a successful action against Radovan Karadzic, the purported leader of the Bosnian Serb faction responsible for the brutal campaign of ethnic cleansing in Bosnia-Herzegovina. In *Cabello v. Fernandez-Larios*, 402 F.3d 1148 (11th Cir. 2005), the family of a murdered Chilean government official brought a successful civil action for crimes against humanity, torture, and extrajudicial killing against the perpetrator. *See also In re Estate of Marcos Human Rights Litigation*, 25 F.3d at 1467 (successful ATS action against perpetrator of summary execution, forced disappearance, and torture); *Filartiga v. Pena-Irala*, 630 F.2d at 876 (successful ATS action against perpetrator of torture).

The Torture Victim Protection Act has played an equally significant role for over twenty years, providing U.S. citizens the opportunity to pursue justice in U.S. courts for torture and extrajudicial killing and holding perpetrators accountable. In *Samantar v. Yousuf*, 130 S. Ct. at 2278, for example, the lead plaintiff is a U.S. citizen whose only hope for redress after having been subjected to torture is through the TVPA. In *Reyes v. Lopez Grijalba*, No. 02-22046-CIV, slip op. at 16-21 (S.D. Fl. 2006), two U.S. citizens brought a successful civil action through the TVPA for torture and

extrajudicial killing. These lawsuits would not have been possible without the TVPA. *See also Chavez v. Carranza*, 407 F. Supp. 2d 925, 930 (W.D. Tenn. 2004) (U.S. citizens successfully recover in TVPA claims for torture and extrajudicial killing); *Xuncax v. Gramajo*, 886 F. Supp. 162, 178 (D. Mass. 1995) (U.S. citizen successfully recovers in TVPA claim for torture). Narrowing the TVPA to prevent U.S. citizens from reaching a whole class of defendants would be contrary to these developments.

Despite 20 years of coexistence between the ATS and TVPA, Congress has not felt the need to revise either statute. *Sosa v. Alvarez-Machain*, 542 U.S. at 725. Congress has not revised either statute since the *Sosa* decision.[14] And, it has declined to do

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[14] Four months after the *Sosa* decision, Senator Dianne Feinstein introduced a legislative proposal to restructure the ATS. Senate Bill 1874 would have placed significant restrictions on ATS litigation. 151 CONG. REC. S11423, 11433 (Oct. 18, 2005). Specifically, the bill would have limited ATS cases to six enumerated claims (torture, extrajudicial killing, genocide, piracy, slavery, or slave trading) but only if the defendant was a direct participant acting with specific intent to commit the alleged tort. S. 1874, 109th CONG. § 2(a) (2005). District courts would not have jurisdiction "if a foreign state is responsible for committing the tort in question within its sovereign territory." *Id.* Other provisions would have placed further restrictions on ATS litigation. For example, district courts would have been precluded from proceeding

so despite extensive litigation involving both statutes.

Congress has established a civil liability regime that is designed to offer redress to victims, punish perpetrators, and deter future abuses. The decisions in *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d at 111 and *Mohamad v. Rajoub*, 634 F.3d at 604, would eviscerate a legal framework that has been affirmed by the three branches of government on numerous occasions. Allowing these decisions to stand would cause further injury to victims of serious human rights abuses and would send the

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with ATS cases "if the President. or a designee of the President, adequately certifies to the court in writing that such exercise of jurisdiction will have a negative impact on the foreign policy interests of the United States." *Id.* at § 2(e). Anonymous complaints would have been precluded except in narrow circumstances. Contingency fee arrangements would have been precluded. *Id.* at § 2(f) and (g). Not surprisingly, the announcement of the bill was met with strong criticism. Eight days after it was submitted, Senator Feinstein withdrew the bill from consideration. In a letter to Senate Judiciary Chairman Arlen Specter, Senator Feinstein indicated "that the legislation in its present form calls for refinement in light of concerns raised by human rights advocates, and thus a hearing or other action by the Committee on this bill would be premature." Letter from Senator Dianne Feinstein, to Senator Arlen Specter (Oct. 25, 2005).

wrong message to perpetrators of such egregious acts.

CONCLUSION

Amici respectfully submit that the ATS and TVPA serve important, but distinct, functions in our legal system. The TVPA was adopted to establish a right of action for torture and extrajudicial killing, thereby affording U.S. citizens the same rights already granted to foreign nationals under the ATS. It was not meant to affect or preempt the ATS. And, it would be inconsistent with the TVPA's very purpose to interpret it in a restrictive manner by limiting its application to natural persons.

For the foregoing reasons, this Court should reverse the lower court rulings and find in favor of Petitioners.

Respectfully submitted, December 21, 2011

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